The facts and arguments appear sufficiently from the judgment.

McElwaine, C.J.—This special case comes before me under somewhat unusual circumstances. The defendants were charged with carrying a load on a motor lorry which exceeded the sum of the registered axle weights of the lorry contrary to Rule 15A (1) of the Rules made under the Traction Engines and Motor Cars Ordinance (Cap. 214).

Two interpretations of the meaning of the word 'load' in the Rule were advanced before the learned Magistrate and there is no question as to the guilt of the defendants even if the interpretation most favourable to them is adopted, unless the rule is invalid by reason of uncertainty. It was not suggested that the rule is not within the powers conferred by s. 16 of the Ordinance. Rule 15A (1) which is contained in Gazette Notification 1426 of 1939 is as follows:—

"15A—(1). No person shall use or permit to be used on a public thoroughfare any traction engine constructed for the purpose of carrying goods and merchandise or any trailer, the load of which exceeds the sum of the registered axle weights of such traction engine or trailer."

Two views were advanced, the first that the rule allows a load not exceeding the sum of the registered axle weights to be placed on the lorry; the second that the rule means that the maximum load which could be placed on the lorry was the difference between the sum of the registered axle weights and the weight of the lorry unloaded.

The words used in the rule are the "load of which" not "the load on which."

"Axle weight" is defined as the aggregate weights transmitted to the road by the wheels of an axle when the lorry is loaded. By rule 13A (1) this weight is to be ascertained and registered by the Registrar of Vehicles and it is the "registered axle weight."

In assessing the axle weight the Registrar of Vehicles takes into consideration the size and strength of the lorry—what weight can it safely carry? The rest of the rules on weights seems to have regard to the load which may be imposed on roads and bridges.

Mr. Morrison's argument that weight of the load or cargo which can be carried may amount to the sum of the axle weights, comes to this—the weight of the cargo is the sum of the following weights: the actual weight of the lorry unloaded, the weight of the driver and attendants, the weight of water when the radiator is full and the weight of the cargo. In other words the weight of the cargo which may be carried is the weight of the cargo plus a considerable amount more.

I think this an absurd interpretation, and in my opinion the reasonable construction of Rule 15A is that the maximum load a lorry may impose on a public road is the sum of its registered axle weights and from this it follows that the maximum weight of cargo which can be put in the lorry is the sum of the registered axle weights minus the weight of the lorry as defined in the Ordinance.

The conviction and sentence of the defendants in the case stated are confirmed, but to overload a lorry by almost three tons, as the Magistrate thought, is deserving of more than a nominal penalty. It was in fact overloaded by over five tons.

Solicitor for the appellants. Mark Morrison.

Order accordingly.

TAN JOO PHUANG vs. REX.

[Court of Criminal Appeal (McElwaine, C.J., Aitken, Ag. J.A. and Worley, J.) July 29, 1941]

Merchandise Marks Ordinance (Cap. 157), s. 12—Trade Marks Ordinance (1938), s. 23—Claim that trade mark registered under Trade Marks Ordinance should not have been registered—Whether Magistrate can so decide.

The appellant was convicted with possession for the purpose of sale of rice flour to which a counterfeit trade mark had been applied. On appeal to the Court of Criminal Appeal it was contended that the learned District Judge should have held that owing to the continuous use of the trade mark in question by other people the trade mark should not have been registered and therefore that the then registered proprietor was disentitled to protection in a Court of Justice.

Held, that once a trade mark has been registered under the Trade Marks Ordinance Magistrates must treat it as being properly registered and must treat the owner of an uncancelled unexpired certificate of registration as the owner of a mark which is protected by law in the Colony within the definition of "Trade Mark" in the Merchandise Marks Ordinance.

CRIMINAL APPEAL.

E. M. Tampoe-Philips for appellant.

C. H. Butterfield Crown Counsel for Crown.

The facts and arguments appear sufficiently from the judgment of the Court of Appeal (McElwaine, C.J., Aitken, Ag. J.A., and Worley, J.) was delivered by:—

McElwaine, C.J.—The appellant was convicted on two charges:—

(1) with possession for the purpose of sale of six bags of rice flour to which a counterfeit trade mark had been applied, namely the "Goldfish" trade mark, which mark was owned by Lee Yew Cheng of Chop Teck Chiang,

Singapore, an offence punishable under s. 12 of the Merchandise Marks Ordinance (Cap. 157);

(2) with possession of instruments for counterfeiting the trade mark mentioned in the first charge.

The defence raised on the facts was that this "Goldfish" trade mark was the property of the proprietor of Chop Teck Chiang of Swatow who advertised this trade mark as his in the Straits Settlements Government Gazette of 20th and 27th April 1934, years before the Trade Marks Ordinance of 1938, providing for the registration of trade marks, was passed.

The defendant and others imported rice flour under this trade mark from the Swatow firm until the Japanese occupation of Swatow in June 1939, after which date the defendant says he used this trade mark with the permission of the Swatow firm.

On 2nd January 1940 Lee Yew Cheng, describing himself as proprietor of Chop Teck Chiang in Singapore, procured the registration of this trade mark in his own name under the Trade Marks Ordinance 1938. Lee Yew Cheng professed to know nothing of the Swatow Chop Teck Chiang, or the trade mark it claimed in 1934.

The appellant relied on s. 23 of the Trade Marks Ordinance, 1938:

"(1) It shall not be lawful to register as a trade mark....any matter, the use of which would by reason of its being likely to deceive or cause confusion or otherwise be disentitled to protection in a Court of Justice...."

Mr. Tampoe Philips' submission was that under this section the learned District Judge should have held that owing to the continuous use of this trade mark by other people the trade mark should not have been registered, and therefore that the present registered proprietor is disentitled to protection in a Court of Justice.

This section has nothing to do with infringement of registered marks; it describes the kind of mark that should not be registered, a matter which concerns the Registrar of Trade Marks in the first place and the High Court in the second place, but which does not concern Courts of summary jurisdiction.

Mr. Tampoe Philips argued that while 'Court' is defined in the Trade Marks Ordinance as meaning the High Court, 'Courts of Justice' in s. 23 includes any Police Court. I do not agree. As I have said, the section merely describes the sort of mark which should not be registered and adjudication on that question does not rest with a Police Court. It would indeed be anomalous if a Magistrate could decide that a mark should not have been registered, while the Registrar and the High Court upon whom the responsibility for registering or refusing to register the mark is imposed by the Ordinance, have decided otherwise.

The appellant could have objected to Lee Yew Cheng being registered as the owner of this trade mark. Had he objected unsuccessfully he could have appealed to the High Court, or, the mark having been registered, he could have taken proceedings to have the registration cancelled under s. 44 and those proceedings could not be brought at any stage in a District or Police Court.

Once a trade mark is registered under the Trade Marks Ordinance Magistrates must treat it as being properly registered and must treat the owner of an uncancelled unexpired certificate of registration as the owner of a mark which is protected by law in this Colony within the definition of "Trade Mark" in the Merchandise Marks Ordinance.

Rightly or wrongly Lee Yew Cheng is the registered owner of this trade mark and must be recognised as such until the certificate is cancelled in accordance with the provisions laid down in the Trade Marks Ordinance.

I think the learned District Judge reached a correct conclusion and I would dismiss the appeal.

Appeal dismissed.

SALT vs. MOHAMMEDAN AND HINDU ENDOWMENTS BOARD.

[Court of Appeal (McElwaine, C.J. (S.S.), Terrell, Ag. C.J. (F.M.S.) and Aitken, Ag. J.A.) June 28, 1941]

Trust—Trust Money paid by defaulting trustees to Solicitor—whether Solicitor has lien for his costs over the trust funds—position of Solicitor.

The trustees of a Mohammedan Charity the Kampong Kling Mosque in Malacca misappropriated trust funds, belonging to the Charity and afterwards paid the sum of $7,100 to the appellant, who was the Solicitor of one of the trustees. The solicitor on the instructions of the Mohammedan and Hindu Endowments Board made numerous payments out of the moneys so paid to him, such payments amounting in all to $6,061.06 and leaving a balance in his hands of $1,038.94. The Board demanded payment of the balance and the solicitor refused to pay, claiming to have a lien upon it for an untaxed bill of costs for professional services rendered to the Trustees and Committee of the Kampong Kling Mosque.

Held, (1) that in the circumstances of this case the Solicitor had no lien on the trust fund in his hands for the cost of professional services rendered to the trustees;

(2) that the money was paid to the appellant for a specific purpose and therefore the appellant could have no lien upon it apart from what might arise from carrying on that purpose.